

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

STRIKE 3 HOLDINGS, LLC,

Plaintiff,

v.

JOHN DOE subscriber assigned IP address  
67.161.168.106

Defendant.

No. 2:21-cv-0199-TLN-CKD

ORDER

Plaintiff's ex parte application to amend the protective order preventing disclosure of defendant's identifying information is before the court. (ECF No. 13.) Having reviewed the application and declaration in support thereof, the court denies the application without prejudice to renewal.

Plaintiff filed this action on February 1, 2021, alleging it holds the copyright on various adult films. Defendant, who was initially known by his or her IP address, allegedly used the BitTorrent protocol to infringe on those copyrights by anonymously downloading and distributing those films to others. (ECF No. 1.) On May 28, 2021, plaintiff was ordered to redact defendant's name and identifying information in all court filings, unless ordered otherwise.

To acquire defendant's true name and address, plaintiff served a third-party subpoena on defendant's internet service provider. According to the return of service filed on June 28, 2021, a summons and complaint were then personally served on defendant on June 7, 2021. Defendant

1 has not filed a responsive pleading or otherwise appeared. Plaintiff's ex-parte application  
2 currently before the court requests to disclose defendant's true identity in future filings including  
3 a request for entry of default, motion for default judgment, and all supporting documents.

4 Defendant notes that the court has, in another case, permitted the disclosure of a  
5 defendant's identity on the public docket after that defendant had an opportunity to attend an  
6 informal conference, failed to schedule or attend such a conference, failed to file an answer to the  
7 complaint, and did not respond to plaintiff's letter notifying defendant that default was imminent.  
8 Similarly, in this case, defendant has been served with the complaint, has not filed an answer, and  
9 has failed to respond to a letter from plaintiff's counsel advising that plaintiff intended to request  
10 entry of default and file a motion for default judgment. (ECF No. 13 at 2.)

11 However, the application before the court does not contain any indication of plaintiff's  
12 basis for concluding the defendant whom plaintiff wishes to identify by true name and address is  
13 the person who infringed on plaintiff's copyrights using the IP address at issue. Plaintiff's  
14 application does not set forth, for example, whether the IP address corresponds to a residential  
15 address, and, if so, whether the subscriber lives in the home and whether other individuals live in  
16 the home. See Cobbler Nevada, LLC v. Gonzales, 901 F.3d 1142, 1146 (9th Cir. 2018) (noting  
17 that "[i]nternet providers... can go so far as to identify the individual who is registered to a  
18 particular IP address (i.e., an account holder) and the physical address associated with the  
19 account, but that connection does not mean the subscriber is even accessing the internet, and  
20 multiple devices can access the internet under the same IP address"). "Identifying an infringer  
21 becomes even more difficult in instances... where numerous people live in and visit a facility that  
22 uses the same internet service." Id. While this poses an "obstacle to naming the correct defendant,  
23 this complication does not change the plaintiff's burden to plead factual allegations that create a  
24 reasonable inference that the defendant is the infringer." Id. at 1146-47.

25 Without being able to consider the basis for plaintiff's identification of defendant as the  
26 copyright infringer, the court will deny the current application without prejudice to renewal. A  
27 renewed application should be filed under seal pursuant to Local Rule 141, if appropriate. In  
28 addition, plaintiff will be ordered to serve a copy of this order on defendant by mail, forthwith.

1 In accordance with the above, IT IS HEREBY ORDERED:

2 1. Plaintiff's application to amend the protective order preventing disclosure of  
3 defendant's identifying information is DENIED at this time without prejudice to renewal; and

4 2. Plaintiff shall serve a copy of this order by mail on defendant forthwith, and, within  
5 seven days of the date of this order, shall file a proof or certification of such service.

6 Dated: October 15, 2021

7   
8 CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

9  
10 8.Strike3.0199.redact  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28